

IN THE SENATE

SENATE BILL NO. 1309

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO DE FACTO CUSTODIANS; AMENDING TITLE 32, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 17, TITLE 32, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE A PURPOSE, TO PROVIDE FOR DE FACTO CUSTODIANS, TO PROVIDE FOR PETITIONS FOR CUSTODY AND MOTIONS TO INTERVENE BY PERSONS SEEKING DETERMINATIONS THAT THEY ARE DE FACTO CUSTODIANS, TO PROVIDE FOR NOTICE, TO REQUIRE STIPULATED FACTS OR FINDINGS OF FACT THAT A PERSON IS A DE FACTO CUSTODIAN, TO PROVIDE CERTAIN EVIDENTIARY STANDARDS, TO PROVIDE FOR THE APPLICATION OF SPECIFIED STANDARDS AND CONSIDERATIONS RELATING TO A DETERMINATION OF THE BEST INTERESTS OF THE CHILD, TO PROVIDE FOR DE FACTO CUSTODIAN ORDERS, TO PROVIDE FOR ACCESS TO CERTAIN RECORDS AND TO PROVIDE FOR TERMINATION OF CUSTODY ORDERS; AMENDING SECTION 15-5-207, IDAHO CODE, TO REVISE PROVISIONS RELATING TO THE APPOINTMENT OF GUARDIANS OF MINORS, TO PROVIDE THAT DE FACTO CUSTODIANS MAY INITIATE PROCEEDINGS FOR THE APPOINTMENT OF A GUARDIAN, TO REVISE PROVISIONS RELATING TO NOTICE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 15-5-213, IDAHO CODE, TO REVISE A DEFINITION OF "DE FACTO CUSTODIAN" AND TO REVISE PROVISIONS RELATING TO THE RECOGNITION OF DE FACTO CUSTODIANS RELATING TO STANDING IN CERTAIN PROCEEDINGS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 32, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 17, Title 32, Idaho Code, and to read as follows:

CHAPTER 17
DE FACTO CUSTODIANS

32-1701. SHORT TITLE. This chapter may be known and cited as the "De Facto Custodian Act."

32-1702. PURPOSE. The purpose of this act is to:

(1) Give constitutionally required deference to the decisions of fit parents in custody actions brought by third parties;

(2) Subject to such constitutionally required deference, meet the needs of children for caring and stable homes by providing a flexible method by which a third party who has cared for and supported a child may obtain legal and physical custody of the child where such custody is in the child's best interests.

32-1703. DE FACTO CUSTODIANS. (1) De facto custodian means an individual who, either individually or together with a copetitioner, has been the primary caretaker and primary financial supporter of a child who,

1 preceding the filing of the petition, resided with the individual for a
2 period or periods amounting to:

3 (a) Six (6) months or more if the child is under three (3) years of age;
4 or

5 (b) One (1) year or more if the child is three (3) years of age or older.

6 (2) Any period of time after the filing of a petition pursuant to this
7 chapter shall not be included in determining whether the child has resided
8 with the individual for the time period as provided in subsection (1) of this
9 section.

10 (3) An individual shall not be deemed a de facto custodian if a child has
11 resided with the individual because:

12 (a) The child was placed in the individual's care through a court order
13 or voluntary placement agreement under title 16, Idaho Code; or

14 (b) The individual is or was cohabiting with, or is or was married to, a
15 parent of the child.

16 32-1704. COMMENCEMENT OF PROCEEDINGS. (1) A child custody proceeding
17 may be initiated in any court of this state with jurisdiction to determine
18 child custody matters, by an individual:

19 (a) Filing a petition seeking a determination that he or she is a de
20 facto custodian pursuant to section 32-1703, Idaho Code, and seeking
21 custody of a child; or

22 (b) Filing a motion seeking permissive intervention pursuant to rule 24
23 of the Idaho rules of civil procedure, in a pending custody proceeding
24 seeking a determination that he or she is a de facto custodian pursuant
25 to section 32-1703, Idaho Code, and seeking custody of a child.

26 (2) A petition for custody or a motion to intervene based on the
27 petitioners or intervenors alleged status as a de facto custodian, filed
28 under this section, must state and allege:

29 (a) The name and address of the petitioner or intervenor and any prior
30 or other name used by the petitioner or intervenor;

31 (b) The name of the respondent mother and father or guardian(s) and
32 any prior or other name used by the respondent(s) and known to the
33 petitioner or intervenor;

34 (c) The name and date of birth of each child for whom custody is sought;

35 (d) The relationship of the petitioner or intervenor to each child for
36 whom custody is sought;

37 (e) The basis for jurisdiction asserted by the petitioner or
38 intervenor;

39 (f) The current legal and physical custodial status of each child
40 for whom custody is sought and a list of all prior orders of custody,
41 including temporary orders, if known to the petitioner or intervenor;

42 (g) Whether any party is a member of the armed services;

43 (h) The length of time each child has resided with the petitioner or
44 intervenor and has resided in the state of Idaho, and the nature of
45 the petitioners or intervenors role in caring for each child for whom
46 custody is sought;

47 (i) The financial support provided by the petitioner or intervenor for
48 each child for whom custody is sought;

1 (j) Whether a proceeding involving custody of the child is pending in a
2 court in this state or elsewhere;

3 (k) Whether physical and/or legal custody should be granted to and/or
4 shared with the respondent(s);

5 (l) Whether any temporary or permanent child support, attorney's fees,
6 costs and disbursements are sought;

7 (m) Whether an order of protection under section 39-6304, Idaho Code,
8 or a similar law of another state, that governs the parties or a party
9 and a minor child of the parties is in effect and, if so, the district
10 court or similar jurisdiction in which it was entered; and

11 (n) The basis upon which the petitioner or intervenor is claiming that
12 it is in the best interests of the child, as defined by section 32-717,
13 Idaho Code, that the petitioner or intervenor have custody of the child.

14 (3) The petition or motion must be verified by the petitioner or
15 intervenor.

16 (4) Written notice of a hearing on a petition or motion to intervene for
17 custody of a child by a de facto custodian must be given to:

18 (a) The parent(s) of the child, if:

19 (i) The person's name appears on the child's birth certificate as
20 a parent;

21 (ii) The person has substantially supported the child;

22 (iii) The person either was married to the person designated on the
23 birth certificate as the natural mother within the three hundred
24 twenty-five (325) days before the child's birth or married that
25 person within the six (6) months after the child's birth;

26 (iv) The person is openly living with the child or the person
27 designated on the birth certificate as the natural mother of the
28 child, or both;

29 (v) The person has been adjudicated the child's parent;

30 (vi) The person has filed a paternity action within six (6) months
31 after the child's birth and the action is still pending; or

32 (vii) The person and the mother of the child signed a voluntary
33 acknowledgment of paternity pursuant to section 7-1106, Idaho
34 Code;

35 (b) The guardian or legal custodian, if any, of the child; and

36 (c) The child's tribe pursuant to federal law, if the child is an Indian
37 child as defined in the Indian child welfare act, 25 U.S.C. 1901, et seq.

38 (5) Notice under this section need not be given to a person listed in
39 subsection (4) of this section whose parental rights have been terminated.

40 (6) Written notice of a hearing on a petition for custody of a child
41 by a de facto custodian must be given to the Idaho department of health and
42 welfare if the petitioner has reason to believe that either parent receives
43 public assistance, the petitioner receives public assistance on behalf
44 of the child or either parent receives child support enforcement services
45 from the Idaho department of health and welfare or applies for such public
46 assistance or child support enforcement services after a petition under this
47 section is filed. Notice to the Idaho department of health and welfare must
48 include a copy of the petition.

49 (7) In an action for custody of a child by a de facto custodian, the
50 parties must stipulate to, or the court must find, facts establishing by

1 clear and convincing evidence that the petitioner or intervenor is a de
2 facto custodian pursuant to the requirements of section 32-1703, Idaho Code,
3 before the court considers whether custody with the de facto custodian is in
4 the best interests of the child.

5 (8) Once a court has found facts supporting the appointment of the
6 petitioner or intervenor as the de facto custodian of a child, the petitioner
7 or intervenor must prove by a preponderance of the evidence that it is in the
8 best interests of the child to be in the custody of the de facto custodian.
9 In determining the best interests of the child, the court shall apply the
10 standards as provided in section 32-717(1), Idaho Code, and shall also
11 consider:

12 (a) Whether the child is currently residing with the person seeking
13 such standing; and

14 (b) If the child is not currently residing with the person seeking such
15 standing, the length of time since the person served as the child's
16 primary caregiver and primary financial supporter.

17 32-1705. NATURE OF DE FACTO CUSTODIAN ORDER -- ACCESS TO RECORDS
18 -- TERMINATION OF DE FACTO CUSTODIANSHIP. (1) A court may enter an order
19 granting a de facto custodian sole or joint legal and/or physical custody as
20 defined in section 32-717B(1), (2) and (3), Idaho Code, in the same manner as
21 it would grant such custody to a parent.

22 (2) An order granting custody to a de facto custodian is subject to the
23 continuing jurisdiction of the court and is modifiable in the same manner
24 as an order establishing parental custody pursuant to section 32-717, Idaho
25 Code, or a similar provision.

26 (3) A de facto custodian who has been granted sole or joint legal
27 custody of a child shall have access to records pertaining to the child who is
28 the subject of the de facto custodianship to the same extent as a parent would
29 have such access pursuant to an order of legal custody.

30 (4) Any party to the proceeding granting custody to a de facto custodian
31 may move for the termination of the custody order. A de facto custodian may
32 move for permission to resign as de facto custodian.

33 (a) A party moving for termination of the de facto custodian-child
34 relationship must show by a preponderance of the evidence that
35 termination of the relationship would be in the best interests of the
36 child.

37 (b) A motion for termination or for resignation may, but need not,
38 include a proposal for the continuing custody of the child.

39 (c) After notice and hearing on a motion for termination or
40 resignation, the court may terminate the custody of the de facto
41 custodian and may make any further orders that may be appropriate in the
42 best interests of the child.

43 SECTION 2. That Section 15-5-207, Idaho Code, be, and the same is hereby
44 amended to read as follows:

45 15-5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR -- PROCEDURE. (1)
46 Proceedings for the appointment of a guardian may be initiated by the
47 following persons:

48 (a) Any relative of the minor;

(b) ~~The minor if he is fourteen (14) or more years of age; a de facto custodian of the minor;~~

(c) Any person who comes within section 15-5-213(1), Idaho Code; or

(d) ~~Any person interested in the welfare of the minor.~~

(2) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by section 15-1-401, ~~of this code~~ Idaho Code, to:

(a) The minor, if he is fourteen (14) or more years of age;

(b) The person who has had the principal care and custody of the minor during the sixty (60) days preceding the date of the petition;

(c) ~~The de facto custodian of the minor, if any~~ Any person who comes within section 15-5-213(1), Idaho Code; and

(d) Any living parent of the minor; provided however, that the court may waive notice to a living parent of the minor who is, or is alleged to be, the father of the minor if:

(i) The father was never married to the mother of the minor and has failed to register his paternity as provided in section 16-1504(4), Idaho Code; or

(ii) The court has been shown to its satisfaction circumstances that would allow the entry of an order of termination of parental rights pursuant to section 16-2005, Idaho Code, even though termination of parental rights is not being sought as to such father.

(3) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 15-5-204, ~~of this part~~ Idaho Code, have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

(4) If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than six (6) months.

(5) The court shall appoint an attorney to represent the minor if the court determines that the minor possesses sufficient maturity to direct the attorney. If the court finds that the minor is not mature enough to direct an attorney, the court shall appoint a guardian ad litem for the minor. The court may decline to appoint an attorney or guardian ad litem if it finds in writing that such appointment is not necessary to serve the best interests of the minor or if the Idaho department of health and welfare has legal custody of the child.

(6) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

SECTION 3. That Section 15-5-213, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-213. DE FACTO CUSTODIAN. (1) "De facto custodian" means a person who has either been appointed the de facto custodian pursuant to section 32-1703, Idaho Code, or if not so appointed, has been the primary caregiver for, and primary financial supporter of, a child who, prior to the filing

1 of a petition for guardianship, has resided with the person for a period of
2 six (6) months or more if the child is under three (3) years of age and for a
3 period of one (1) year or more if the child is three (3) years of age or older.

4 (2) If a court determines by clear and convincing evidence that a person
5 meets the definition of a de facto custodian, and that recognition of the de
6 facto custodian is in the best interests of the child, the court shall give
7 the person the same standing that is given to each parent in proceedings for
8 appointment of a guardian of a minor. In determining whether recognition
9 of a de facto custodian is in the child's best interests, the court shall
10 consider:

11 (a) Whether the child is currently residing with the person seeking
12 ~~recognition as a de facto custodian~~ such standing; and

13 (b) If the child is not currently residing with the person seeking
14 ~~de facto custodian status~~ such standing, the length of time since the
15 person served as the child's primary caregiver and primary financial
16 supporter.